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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 57 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANUBHAI JETHABHAI PATEL

Versus

KUSUMBEN JASBHAI DESAI

Appearance:

MR HM PARIKH for Petitioner

MR BG PATEL for Respondents No. 1-2

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 04/10/2001

ORAL JUDGEMENT

1. Heard the learned counsel for the respective parties. By consent, this revision application is taken up for final hearing today.

2. The petitioner filed the suit for injunction on the allegation that he was in possession. The Trial Court dismissed the application for temporary injunction holding that the plaintiff was not in possession and it was the defendants who were in possession. Thereafter, the petitioner moved an application for leave to amend the plaint so as to add a prayer for recovery of possession alleging that he had been dispossessed illegally in January, 1997. The learned Trial Judge has dismissed the said application. The learned Trial Judge has taken the view that the allegation that the plaintiff has been dispossessed during the pendency of the suit does not appear to be correct. However, if the application for amendment is allowed, the averment is not automatically proved and it will be decided at the trial whether the allegation is true or not. The learned counsel for the petitioner states that the petitioner will withdraw the appeal which he has filed in the District Court against the order of the Trial Court refusing temporary injunction. As a matter of fact, the said appeal will not survive if amendment is allowed. In the circumstances, this revision application is allowed and the impugned order passed by the 8th Joint Civil Judge (S.D.), Nadiad below Exh.35 in Regular Civil Suit No.532 of 1996 is set aside and the said application praying for leave to amend the plaint is allowed. Rule made absolute with no order as to costs.

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